

(1) The Judge shall grant the motion and certify the contested ruling to the Authority if:

(i) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(ii) Immediate review will materially advance completion of the proceeding, or the denial of immediate review will cause undue harm to a party or the public.

(2) If the motion is granted, the Judge or Authority may stay the hearing during the pendency of the appeal. If the motion is denied, exceptions to the contested ruling may be filed in accordance with § 2423.40 of this subchapter after the Judge issues a decision and recommended order in the case.

(d) *Bench decisions.* Upon joint motion of the parties, the Administrative Law Judge may issue an oral decision at the close of the hearing when, in the Judge's discretion, the nature of the case so warrants. By so moving, the parties waive their right to file posthearing briefs with the Administrative Law Judge, pursuant to § 2423.33. If the decision is announced orally, it shall satisfy the requirements of § 2423.34(a)(1)–(5) and a copy thereof, excerpted from the transcript, together with any supplementary matter the judge may deem necessary to complete the decision, shall be transmitted to the Authority, in accordance with § 2423.34(b), and furnished to the parties in accordance with § 2429.12 of this subchapter.

(e) *Settlements after the opening of the hearing.* As set forth in § 2423.25(a), settlements may be either informal or formal.

(1) *Informal settlement procedure: Judge's approval of withdrawal.* If the Charging Party and the Respondent enter into an informal settlement agreement that is accepted by the Regional Director, the Regional Director may request the Administrative Law Judge for permission to withdraw the complaint and, having been granted such permission, shall withdraw the complaint and approve the informal settlement between the Charging Party and Respondent. If the Charging Party fails or refuses to become a party to an

informal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director shall enter into the agreement with the Respondent and shall, if granted permission by the Administrative Law Judge, withdraw the complaint. The Charging Party then may obtain a review of the Regional Director's decision as provided in subpart A of this part.

(2) *Formal settlement procedure: Judge's approval of settlement.* If the Charging Party and the Respondent enter into a formal settlement agreement that is accepted by the Regional Director, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval. If the Charging Party fails or refuses to become a party to a formal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the Respondent and the Regional Director. After the Charging Party is given an opportunity to state on the record or in writing the reasons for opposing the formal settlement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval.

§ 2423.32 Burden of proof before the Administrative Law Judge.

The General Counsel shall present the evidence in support of the complaint and have the burden of proving the allegations of the complaint by a preponderance of the evidence. The Respondent shall have the burden of proving any affirmative defenses that it raises to the allegations in the complaint.

§ 2423.33 Posthearing briefs.

Except when bench decisions are issued pursuant to § 2423.31(d),

posthearing briefs may be filed with the Administrative Law Judge within a time period set by the Judge, not to exceed 30 days from the close of the hearing, unless otherwise directed by the judge, and shall satisfy the filing and service requirements of part 2429 of this subchapter. Reply briefs shall not be filed absent permission of the Judge. Motions to extend the filing deadline or for permission to file a reply brief shall be filed in accordance with § 2423.21.

§ 2423.34 Decision and record.

(a) *Recommended decision.* Except when bench decisions are issued pursuant to § 2423.31(d), the Administrative Law Judge shall prepare a written decision expeditiously in every case. All written decisions shall be served in accordance with § 2429.12 of this subchapter. The decision shall set forth:

- (1) A statement of the issues;
- (2) Relevant findings of fact;
- (3) Conclusions of law and reasons therefor;
- (4) Credibility determinations as necessary; and
- (5) A recommended disposition or order.

(b) *Transmittal to Authority.* The Judge shall transmit the decision and record to the Authority. The record shall include the charge, complaint, service sheet, answer, motions, rulings, orders, prehearing conference summaries, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence, basis for any sanctions ruling, official transcript of the hearing, briefs, and any other filings or submissions made by the parties.

§§ 2423.35–2423.39 [Reserved]

Subpart D—Post-Transmission and Exceptions to Authority Procedures

§ 2423.40 Exceptions; oppositions and cross-exceptions; oppositions to cross-exceptions; waiver.

(a) *Exceptions.* Any exceptions to the Administrative Law Judge's decision must be filed with the Authority within 25 days after the date of service of the Judge's decision. Exceptions shall satisfy the filing and service require-

ments of part 2429 of this subchapter. Exceptions shall consist of the following:

(1) The specific findings, conclusions, determinations, rulings, or recommendations being challenged; the grounds relied upon; and the relief sought.

(2) Supporting arguments, which shall set forth, in order: all relevant facts with specific citations to the record; the issues to be addressed; and a separate argument for each issue, which shall include a discussion of applicable law. Attachments to briefs shall be separately paginated and indexed as necessary.

(3) Exceptions containing 25 or more pages shall include a table of contents and a table of legal authorities cited.

(b) *Oppositions and cross-exceptions.* Unless otherwise directed or approved by the Authority, oppositions to exceptions, cross-exceptions, and oppositions to cross-exceptions may be filed with the Authority within 20 days after the date of service of the exceptions or cross-exceptions, respectively. Oppositions shall state the specific exceptions being opposed. Oppositions and cross-exceptions shall be subject to the same requirements as exceptions set out in paragraph (a) of this section.

(c) *Reply briefs.* Reply briefs shall not be filed absent prior permission of the Authority.

(d) *Waiver.* Any exception not specifically argued shall be deemed to have been waived.

§ 2423.41 Action by the Authority; compliance with Authority decisions and orders.

(a) *Authority decision; no exceptions filed.* In the absence of the filing of exceptions within the time limits established in § 2423.40, the findings, conclusions, and recommendations in the decision of the Administrative Law Judge shall, without precedential significance, become the findings, conclusions, decision and order of the Authority, and all objections and exceptions to the rulings and decision of the Administrative Law Judge shall be deemed waived for all purposes. Failure to comply with any filing requirement established in § 2423.40 may result in